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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/840,181 | 05/05/2004 | Steve A. Herweck | ATA-395 | 7499 |
| 959 | 7590 | 10/18/2006 | EXAMINER | |
| LAHIVE & COCKFIELD 28 STATE STREET BOSTON, MA 02109 | | | BOGART, MICHAEL G | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |
| DATE MAILED: 10/18/2006 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/840,181

Applicant(s)

HERWECK, STEVE A.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 15-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04 February 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 10-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over of Sakai (US 5,960,802 A) in view of Kaufmann (US 6,089,776 A) and Trandai *et al.* (US 5,585,092 A; hereinafter “Trandai”).

Regarding claim 1, Sakai teaches a medication dispenser comprising:

A porous applicator (2); and

At least one medicated agent (hair growth chemical) disposed within the porous applicator (2);

Wherein the porous applicator (2) supports capillary action (abstract; col. 3, lines 19-25)(abstract; see fig. 1, *infra*).

Sakai does not teach the specific capillary functionality of the instant invention.

Kaufmann teaches a liquid medicine dispenser (10) that includes the capillary functionality of the instant invention (col. 1, lines 16-35; col. 4, line 50-col. 5, line 29)(see fig. 1, *infra*).

Trandai teaches a topical medical composition that may include a dye or pigment, rendering it visibly detectable (abstract; col. 12, lines 14-19).

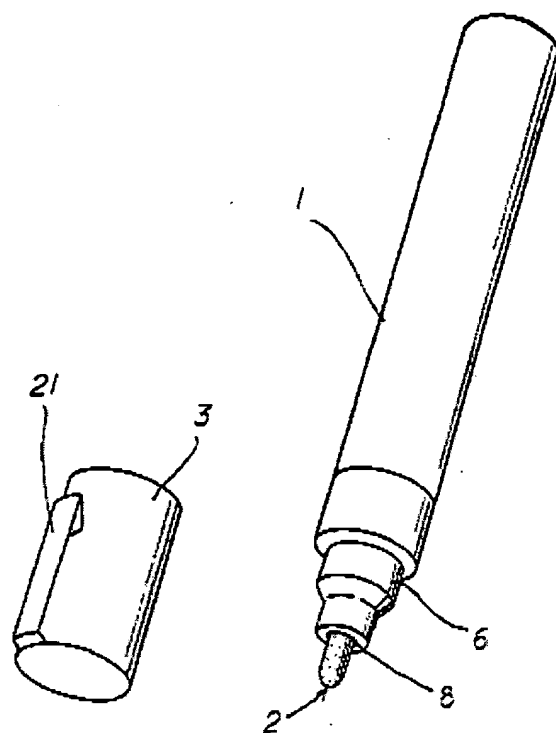
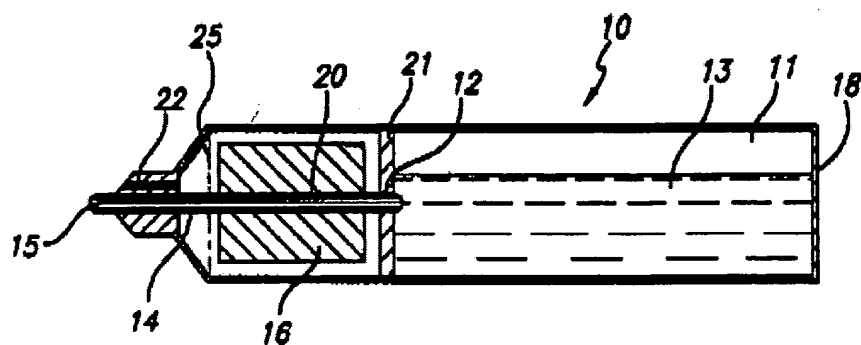


FIG. 1



At the time of the invention, it would have been obvious to select the capillary distribution materials of Kaufmann and add the pigment or dye of Trandai to the fluid dispensing

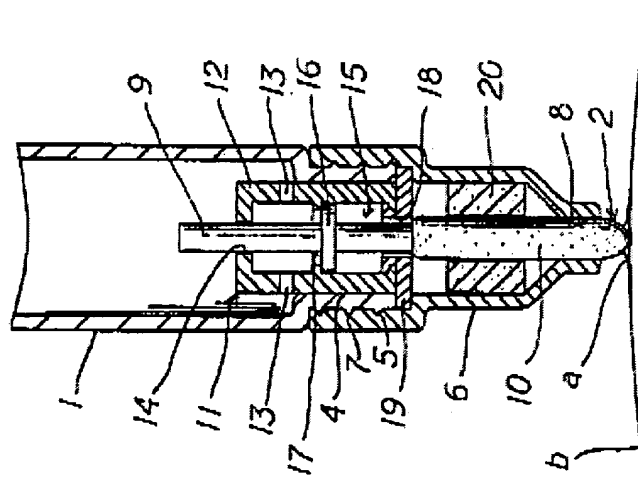
utensil of Sakai in order to provide for a means of controlled application and detecting of hair growth chemicals or deodorant gels.

Regarding the claimed limitations concerning capillary functions, apparatus claims must be structurally distinguishable from the prior art. MPEP § 2114.

Regarding claims 2 and 3, Sakai teaches an elongate holder (1, 3) capable of holding the porous applicator (2), the holder comprising a coupling (6) capable of receiving the porous applicator (2)(fig. 1).

Regarding claim 4, Sakai teaches that the porous applicator (2) is removably and replaceably attached to the holder (1)(col. 3, lines 35-48)(see fig. 3, *infra*).

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Regarding claim 5, Sakai teaches a wick holder (6) coupled to the porous applicator (2)(fig. 3).

Regarding claim 6, Sakai teaches a holder (1) comprising a casing (3) that does not contain a medicated ink reservoir (fig. 1).

Regarding claim 7, Sakai teaches a holder (1) which is capable of use as a grip for a user to grasp to control the porous applicator (2) and application of a medicated agent to a target location (col. 1, lines 41-50).

Regarding claim 10, Kaufmann teaches a wick (16, 20).

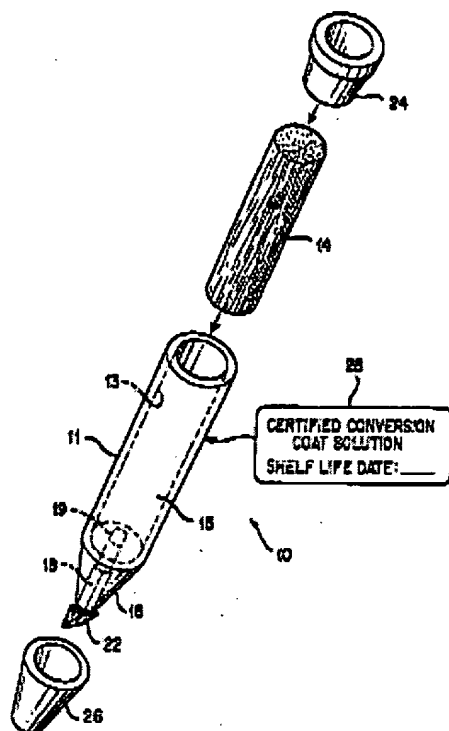
Regarding claims 11 and 12, Sakai teaches a removable and replaceable cap (3) placeable over the porous applicator (2)(fig. 1).

Claims 8, 9, 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakai, Kaufmann and Trandai as applied to claims 1-7 and 10-102 above, and further in view of Hubbell (US 6,217,935 B1).

Sakai, Kaufmann and Trandai do not teach an identifier.

Hubbell teaches a pen type chemical dispenser (10) with text-based labels (28)(see fig. 1, *infra*).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the labels of Hubbell to the dispenser of Sakai, Kaufmann and Trandai in order to make the contents of the dispenser known to a potential user.



Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

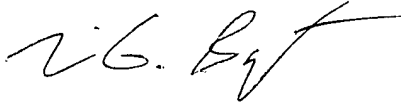
In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
15 October 2006


JACQUELINE STEPHENS
PRIMARY EXAMINER